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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,011	01/09/2001	Vassil Iliya Ognyanov	317743-103C	7091
39731	7590	04/18/2005	EXAMINER	
LAW OFFICES OF ARTHUR E. JACKSON P.O. BOX 88 HOPEWELL, NJ 08525			COLEMAN, BRENDA LIBBY	
			ART UNIT	PAPER NUMBER
			1624	

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/757,011

Applicant(s)

OGNYANOV ET AL.

Examiner

Brenda L. Coleman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 43-76 are pending in the application.

This action is in response to applicants' amendment dated January 12, 2005.

Claims 43, 57, 58, 66 and 68 have been amended.

### *Response to Arguments*

Applicant's arguments filed January 12, 2005 have been fully considered with the following effect:

1. The applicant's amendments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 5) in the last office action, which are hereby **withdrawn**.
2. With regards to the objection to claims 43-76 as containing non-elected subject matter, the applicants amendments and remarks have been fully considered with the following effect: the applicants' amendments and remarks were sufficient to overcome the objection to the compounds as claimed herein include nitrogen containing hetero rings in the definition of  $R^{xa}$  and  $R^{yb}$  (last line on page 2); and in the definition of  $R^q$ ,  $R^r$  and  $R^s$  where  $R^q$ ,  $R^r$  and  $R^s$  contains a nitrogen atom (line 7 on page 3).

However, the claimed compounds, compositions, and methods that employ them present a variable core. The formula contains compounds drawn to the non-elected inventions. The applicants' election of Group II of the restriction requirement presented in the parent application in the preliminary amendment filed January 9, 2001. Group II was as follows: Claims 1, 3-14 and 18-27, drawn to compounds, compositions and method of use where at least one of the substituents  $R^x$  and  $R^y$  is an oxygen or sulfur

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containing hetero ring and the other is non-nitrogen containing hetero ring with no additional heterocyclic rings as shown in species A32, A41, A42, A140 and A161. The compounds as claimed herein include nitrogen containing hetero rings in the definition of  $R^q$ ,  $R^r$  and  $R^s$  where  $R^q$ ,  $R^r$  and  $R^s$  contains a nitrogen atom (line 9 of claim 62); the definition of  $R^5$  where  $R^5$  is tetrazol-5-yl (line 4 on page 5); the definition of  $R^{23}$  and  $R^{24}$  where  $R^{23}$  and  $R^{24}$  can be combined to include 1,3-dioxolane or 1,3-dioxane (see lines 11-12 on page 5); and the definition of  $R^{13}$  and  $R^{14}$  where  $R^{13}$  and  $R^{14}$  together with the attached nitrogen atom can form a 5 to 7-membered ring (see the last two lines on page 5).

In view of the amendment dated January 12, 2005, the following new grounds of rejection apply:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 43-76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

- a) Claims 43 and claims dependent thereon, i.e. 44, 45, 48-59, 61 and 63-76 are vague and indefinite in that it is not known what is meant by the variables  $R^q$ ,  $R^r$  and  $R^s$ , which are not defined within the claim.

- b) Claims **43** and claims dependent thereon, i.e. 44-51, 55-65 and 68-76 are vague and indefinite in that it is not known what is meant by the list of variables  $R^{13}$ ,  $R^{14}$ ,  $R^{15}$ ,  $R^{16}$ ,  $R^{17}$ ,  $R^{18}$ ,  $R^{19}$  and  $R^{20}$ , which is missing a comma after  $R^{18}$ .
- c) Claims **46** and 47 recite the limitation "nitrogen" in the definition of  $R^q$ ,  $R^r$  and  $R^s$ . There is insufficient antecedent basis for this limitation in the claim.
- d) Claim **62** recites the limitation "thiazolyl, isothiazolyl, oxazolyl, isoxazolyl, benzothiazolyl and benzoxazolyl" in the definition of  $R^q$ ,  $R^r$  and  $R^s$ . There is insufficient antecedent basis for this limitation in the claim.
- e) Claim **62** recites the limitation "nitrogen" in the definition of  $R^q$ ,  $R^r$  and  $R^s$ . There is insufficient antecedent basis for this limitation in the claim.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brenda L. Coleman  
Primary Examiner Art Unit 1624  
April 13, 2005